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BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 676

RAIL TRANSPORTATION CONTRACTS UNDER 49 U.S.C. 10709

COMMENTS OF CSX TRANSPORTATION, INC.

CSXT thanks the Board for this opportunity to submit written comments CSXT joins in, and fully supports, the comments of the Association of American Railroads (AAR) These brief separate comments by CSXT are intended to underscore certain points made by the AAR from CSXT's perspective, and to suggest an alternative for the Board's consideration.

CSXT appreciates the efforts of the Board to be helpful to carriers and shippers alike in clarifying relationships, and in particular, distinguishing between contractual and common carrier relationships.

The responses in this proceeding and in the prior proceeding, Ex Parte 699, show these are sometimes difficult issues, often complex, and virtually impossible to define in any kind of simple way The Board's most recent proposal in this proceeding attempts to

address some of these often-difficult issues taking a different, but still regulatory, approach

CSXT agrees with the AAR that the Board's statutory authority does not reach as far as the proposal would seem to go That is not to suggest that there may not be value in adding more clarity to our contracts, including unilateral contract offerings that shippers accept without formal signature, and CSXT will here suggest a possible approach for the Board to consider.

Railroads are sometimes criticized as being "difficult to do business with " CSXT has certainly worked hard to make it easier for customers to do business with us We have moved in many ways to simplify our business processes and our customer interfaces Our ShipCSX® website is a state of the art industry tool and a major step forward in customer convenience and efficiency.

CSXT does not believe that the full disclosure/informed consent language suggested by the Board is truly needed. With all respect, CSXT feels this language would instill an unnecessary element of confrontation and an adversarial tone into contractual relationships that we, as suppliers in a competitive marketplace, would greatly prefer not to have to inject We simply do not believe it is necessary, or appropriate, to recite regulatory remedies and alternatives for our customers who are sophisticated business people, frequently represented by their own lawyers, and very accustomed to complex business transactions

The suggestion that some sort of full disclosure/informed consent be signed is both unnecessary and a potential impediment to commerce While it may be difficult to appreciate, many traffic professionals strike a deal with CSXT and begin shipping immediately – at the contract price In some instances, shipments are tendered prior to preparation of lengthy contracts that are signed at a later time by both parties, and in many instances, shipments are tendered under contractual arrangements that are never intended to be signed. Yet, neither party would ever deny that a binding contract was entered into when there has been a meeting of the minds Imposing an unnecessary bureaucratic requirement for formalities could leave shippers, who are counting on the benefit of a contract rate, contemplating the possibility that a technical deficiency could invalidate their contract, creating an ambiguous situation where the legally applicable rate is actually the (higher) common carrier rate.

It is no answer that the railroads could enforce the proposed requirement for a signed "consent" by refusing to haul freight until the required signature is received The rail industry has a rich tradition that the tender of the load is acceptance of terms.[1] The whole system is designed with a bias toward moving freight Where there is a meeting of the minds and the shipper has received an acceptable contract price quotation, that should certainly be sufficient, and should not render a mutually agreed upon price invalid because a technical requirement for a signed informed consent document was not met

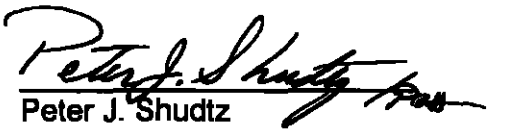
[1] Of course, the "terms" for a regulated shipment included the full panoply of regulatory rights and responsibilities

CSXT believes the Board could certainly give guidance to the industry on what wording it would encourage be included in a contract While CSXT could not embrace a suggestion that the specific disclosure wording alluding to customer rights to litigate be included, the Board has a good suggestion with respect to unambiguously setting out an intent to enter into a 49 U S C 10709 contract in the document itself

CSXT suggests the Board simply recommend an industry best practice, and affirmatively encourage the carriers to include wording to the effect that, "This is a rail transportation contract under 49 U.S C 10709," CSXT would willingly and voluntarily undertake to include wording to that effect in our formal signatory contracts and our less formal transportation contract documents We believe that such clarity should be encouraged In short, a Board recommendation that the writing that manifests the contract include both the term "contract" and a reference to the statutory section seems to us a positive development -- one that CSXT can and would embrace voluntarily

While regulation is often the only effective way to mandate actions, there are times when federal agencies may act just as effectively through recommendations and encouragement and we believe this to be such a case Accordingly, while the Board may not have the statutory authority to enforce a requirement, CSXT suggests voluntary conformity by the carriers is likely to follow such a recommendation

Respectfully submitted,



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